January 7, 2016

ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
MEMORANDUM

TO: Chief Executive Officers, Member Hospitals and Health Systems
    In-House Counsel
    Chief Financial Officers
    Government Relations Personnel
    Public Relations Directors

FROM: A.J. Wilhelmi, President & CEO
      Mark Deaton, Senior Vice President and General Counsel

SUBJECT: Appellate Court Ruling on Illinois Hospital Property Tax Exemption

The Illinois Appellate Court in Springfield has ruled that IHA-supported 2012 legislation preserving hospital property tax exemption is unconstitutional (see ruling here). The ruling came in the case of The Carle Foundation v. Department of Revenue, in which the trial court held in favor of Carle Foundation that (1) the 2012 law applied retroactively to exemption applications pending when the law was passed and (2) the law was constitutional. The Appellate Court reversed the trial court’s decision.

Following a decade of uncertainty and unfavorable court decisions, the General Assembly in 2012 added a new Section 15-86 to the Property Tax Code to specifically address property tax exemption for hospitals and health systems. You may recall that there is both a constitutional test for exemption (called the “use test”) and a statutory test (called the “ownership test”). The new Section 15-86 specifically stated that it was intended as a new “ownership test” for hospitals.

Despite that clear statement, the Appellate Court believes that Section 15-86 ignores the constitutional test and permits the Department of Revenue to grant an exemption regardless of whether a hospital meets the constitutional “use test.”

IHA believes that Section 15-86 is constitutional. It was painstakingly drafted over many months with input from many tax exemption experts. There is nothing in the language or history of the law to suggest that the constitutional requirements for exemption could be ignored.

In the 2008 Provena decision, the same Appellate Court that issued the Carle decision this week, stated that the General Assembly has the power to “either change or make
definite the formula for the determination of the medical/charitable use of real property.” That was the intent of the new Section 15-86.

Carle’s lawyer and IHA’s lawyers are carefully reviewing the 46-page opinion and will discuss next steps. This decision is not a final, binding decision because it is subject to further appeal. Therefore, it has no immediate impact on existing hospital property tax exemptions. Carle has roughly a month to decide whether to appeal to the Illinois Supreme Court, which would be obligated to take the case if appealed.

IHA has released the following statement in response to initial media inquiries:

“The Illinois Health and Hospital Association is disappointed with the Appellate Court ruling. The bipartisan legislation enacted by the Illinois General Assembly in 2012 had ended a decade of uncertainty regarding the test for hospital property tax exemption. The law is clear, fair and reasonable. Illinois hospitals provide $5.5 billion in benefits to their communities annually, including more than $1 billion in charity care alone (measured at cost). It’s important to note that this is not a final decision and has no immediate impact.”

This issue may prompt inquiries from your local media. Please see suggested talking points below.

We will keep you informed of further developments.

**Suggested Tax Exemption Talking Points**

- IHA strongly advocated for the bipartisan legislation (Public Act 97-688) enacted by the Illinois General Assembly in 2012 pertaining to hospital tax exemption and believe it is clear, fair and constitutional.

- It accomplished three important goals:
  --It brings clarity to an issue that had vexed hospitals and taxing bodies for a decade.
  --It focuses entirely on meeting the health care needs of low-income and underserved individuals.
  --It recognizes and encourages the kinds of innovative health care that is required by health reform.

- The recent Appellate Court ruling that the law is unconstitutional seems to rest on the premise that the “ownership” test as embodied in the legislation ignores the “use” test embodied in the constitution for property tax exemption.
• There is nothing in the language or history of this law to suggest that the constitutional requirements for exemption should be ignored.

• The same Appellate Court that issued this recent ruling was the court that stated in the Provena decision that the General Assembly has the power to “either change or make definite the formula for the determination of the medical/charitable use of real property”.

• The legislation strikes an appropriate balance between the role of the legislature and the role of the courts in shaping tax exemption policy in Illinois. The uncertainty and confusion that had beset this area of the law has been eliminated by the legislation’s clear—and clearly constitutional—standard for exemptions.

• Illinois hospitals are at the forefront of an unprecedented transformation in health care brought about by federal and state health reform. The exemption law is fostering that transformation by permitting hospitals to focus their time, energy, and resources on new strategies to better serve all of the residents of our state instead of being distracted by the uncertainty of their exemption.

• Taxing local hospitals hurts the communities they serve and diverts dollars that could be used to care for patients, and to upgrade equipment, modernize facilities and hire needed staff.

• More than 40 percent of hospitals across Illinois are currently operating on slim margins (negative or less than 2 percent).

• Hospitals already provide $5.5 Billion in benefits to their communities annually, including more than $1 Billion in charity care alone (measured at cost).

• Hospitals are also strong economic drivers in their communities, generating $88.8 Billion annually for their local and state economies as well as employing more than a quarter million people, generating nearly 500,000 direct and indirect jobs.

• The issue that drove the re-examination of hospital tax exemption a decade ago has been resolved:
  - The Illinois Hospital Uninsured Patient Discount Act requires hospitals to provide free care to uninsured
patients up to 200% of the federal poverty levels (FPLs) in urban areas ($48,500 for a family of four) and 125% FPL in rural areas ($30,313 for a family of four).

- Additionally, it requires hospitals to provide discounts to 135% of the cost of the care provided to uninsured patients up to 600% FPL ($145,500 for a family of four) in urban areas and 300% FPL ($72,750 for a family of four) in rural areas.

- Hospitals are the fourth largest contributor of state revenue paying more than a $1 billion a year to the state, under the Hospital Assessment Program, roughly three times that of the next largest contributor, bringing in more revenue than the state Lottery.

- Customize talking points on the impact of losing tax exemption, your unique missions and patient population served, amount of community benefit and charity care provided, etc.